Nos. 14663-14664-14665

United States
COURT OF APPEALS
for the Ninth Circuit

WILLIAM BENZ, et al., *Appellants,*

vs.

COMPANIA NAVIERA HIDALGO, S.A., *Appellee.*

M. D. MacRAE, et al., *Appellants,*

vs.

COMPANIA NAVIERA HIDALGO, S.A., *Appellee.*

JEFF MORRISON, et al., *Appellants,*

vs.

COMPANIA NAVIERA HIDALGO, S.A., *Appellee.*

APPELLANTS' REPLY BRIEF

Appeals from the United States District Court for the District of Oregon.

HONORABLE GUS J. SOLOMON, District Judge.

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STATEMENT OF THE CASE

Appellee criticizes our brief for being "notably stingy in discussing the evidence" (Appellee's Br. p. 5). We will, therefore, within the available limits of this brief, discuss in more detail the facts underlying this dispute.

Although appellee pretends to set forth "a more adequate statement of the facts" its statement is entirely silent upon the facts upon which the crew members of the SS RIVIERA based their belief that the vessel was unseaworthy.

The facts were that long before the vessel reached the Port of Portland the crew members complained to the master concerning the food being served aboard the vessel and other conditions on the vessel (Tr. 75, 136, 143, 146). It was only after the vessel had been in port for six days and when it was about ready to leave (Tr. 125) that the crew members on account of the unfitness of the life-saving equipment, the food, and other conditions aboard the vessel, delivered to the master on September 9, 1952, the written document signed by a number of the members of the crew stating that they wanted to be paid off and sent home because "all that the captain promised in the past is not realized" (Tr. 138, 473).

The trial court, in the opinion which it rendered after personally inspecting the vessel, noted that it was conceded "that the beef purchased in India was lean and not of good grade", and noted that weevils were found in the cereal and rice. Also the court said that there were cockroaches on the ship (Tr. 464). The appellee's own witness, the chief steward, who did not go on strike, testified that from "a quarter to a half" of the meat when it was thawed out was not fit for human consumption and had to be thrown overboard (Tr. 190). He also stated that that which could be cooked could only be served if it were boiled (Tr. 187).

The District Court in order to find that the food was satisfactory aboard the vessel resorted to the "Scale of Provisions" set forth in the articles (Tr. 465), although it is generally recognized that such scale is "archaic" and insufficient. *Newton v. Gulf Oil Corporation* (CA-3 1950), 180 F. 2d 491, 493.

The photographs of the vessel, which are made a part of this record surely demonstrate the terrible conditions existing aboard the vessel and which conditions prompted the crew members to go on strike. The crew members were well within their rights in refusing to continue working aboard the vessel under its unseaworthy conditions. *THE JACOB LUCKENBACH* (DC ED La. 1929), 36 F. 2d 381; *THE HEROE* (DC Del. 1884), 21 Fed. 525. And even if the vessel were not technically unseaworthy, their action was justified where they had substantial grounds to believe that it was unseaworthy. *Weisthoff v. American Hawaiian Steamship Company,* 79 F. 2d 124 (CCA-2 1935), cert. denied 296 U.S. 619; *U. S. v. Ashton,* 24 F. Cas. No. 14,470, p. 873. The record abundantly supports their position.

The crew members, because of their refusal to continue working aboard the vessel, were discharged and removed from the vessel. The appellee then sought a new crew to man its vessel for the voyage to the Orient with a cargo of American grain.

Also the unions involved in these cases recognized that the low wages and inferior working conditions maintained by appellee aboard the SS RIVIERA were detrimental to their economic interests in the trade in which

the vessel was engaged. It was in this setting that the unions began picketing the vessel for the purpose of inducing the appellee to improve the working conditions aboard the vessel in order to bring it in line with the working conditions maintained on vessels upon which its members were employed.

We have not in this appeal deemed it necessary to ask this court to re-examine the correctness of the court's finding that the vessel was technically seaworthy. That issue may have been relevant with respect to the rights of the individual crew members to their wages or transportation to their ports of engagement. But after the crew members had been removed from the vessel, the question of whether their dispute with their former employer or the unions' dispute with the employer was justified or had any real basis is beside the point in determining the existence of the labor dispute. *Matson Navigation Co. v. SIU* (1951 DC Md.), 100 F. Supp. 730.

The appellee in its Statement of Facts beginning at the bottom of page 6 of its brief, attempts to mislead the court by stating that the Sailors' Union of the Pacific by means of the Makiki leaflet, induced the crew members to go on strike. Such was not the fact, but on the contrary the trial court found that the Sailors' Union of the Pacific did not induce the crew members to go on strike (Tr. 454). The American seamen who talked to the crew members before they went on strike were from the SS COTTON STATE, which was in the berth next to the SS RIVIERA. They were not members of the

Sailors' Union of the Pacific, but were members of the National Maritime Union, a union affiliated with the CIO and in competition with the Sailors' Union of the Pacific (Tr. 158, 453).

The record shows clearly that the Sailors' Union of the Pacific did not take part in the SS RIVIERA dispute until after the resolution was adopted and concurred in by the branches of the SUP on October 14, 1952, more than one month after the crew members went on strike and were discharged by the master. The picketing for which damages were awarded by the court below commenced on October 14, 1952, and during the entire period of the picketing and for more than a month previously, the former crew members were not under articles.

Also appellee's statement of facts is absolutely silent with respect to the admission and finding that all of the unions involved have an economic interest in the trade and commerce in which the SS RIVIERA was engaged (Tr. 20, 243).

ARGUMENT

The Purpose of the Picketing

The appellee insists that the purpose of the picketing by the unions was to require it to rehire the former crew members. The absurdity of this contention is apparent, since the crew members had already been off the vessel for a month. They had been jailed by the Immigration authorities and had been ordered deported and had no

desire to return to the ship (Tr. 18). They believed that the ship was unseaworthy and one of them had committed suicide (Tr. 418).

In order to substantiate its conclusion that the purpose of the picketing was to secure the rehiring of the former crew members, the appellee has referred to the testimony of William Benz (Tr. 165) and the resolution adopted by the Sailors' Union of the Pacific (Tr. 415). However, in neither Benz's testimony nor in the resolution is there found any demand for rehiring of the former crew members. On the other hand the resolution points out clearly that the appellee "is paying wages of less than one-third the amount which the American shippers are paying, and * * * is taking away business from American operated ships * * *." The resolution also, after describing the conditions aboard the SS RIVIERA stated that the appellee "is unfair to the Sailors' Union of the Pacific and other legitimate seamen's unions all over the world." The resolution called for picketing to the vessel and publicity of the dispute. There was nothing said in the resolution concerning the rehiring of the crew members. The resolution was a clear expression of the purpose of the picketing to protect the economic interests of the unions involved.

The court found that the unions had an economic interest in the trade in which the vessel was involved and that the wages paid were only about one-third the amount paid to union seamen (Tr. 243, 331, 378). Also it was admitted that 25 jobs were open for seamen aboard the vessel (Tr. 21). Furthermore, the testimony

of Jeff Morrison (Tr. 213) and M. D. MacRae (Tr. 194) and William Benz (Tr. 158) who are appellants and union representatives of the three unions involved in these cases, clearly demonstrates that the purpose of the picketing was to protect their economic interests in the trade.

The problem of foreign competition in the carriage of American cargoes is graphically illustrated by pretrial exhibit No. 83 (Tr. 474) which shows the rapid decline of charter rates on account of foreign competition.

The absurdity of the conclusion that the picketing was for the purpose of securing the rehiring of the crew members becomes even more apparent when applied to the picketing by the Master, Mates and Pilots and the SIU. Neither of these unions had any contract whatsoever with the former crew members. Appellee attempts to connect the Masters, Mates and Pilots with the picketing by the SUP by the phone calls between the union agents. Counsel for appellee adroitly lists a portion of the testimony of M. D. MacRae to prove this point but a reading of his entire testimony clearly shows that his picketing was in protection of his economic interest in the trade (Tr. 194). To connect the picketing of the SIU with the picketing of the SUP, appellee is forced to resort to the fact that the unions had the same attorneys and that Harry Lundeberg, who is the executive officer of the Sailors' Union of the Pacific, is also the executive officer of the International organization of which the Atlantic and Gulf District of the SIU is also a member. Appellee makes this bold assertion in the teeth of the

uncontradicted evidence that the Atlantic and Gulf District of the SIU is an autonomous union which is merely affiliated with the Seafarers' International Union (Tr. 215).

The Unlawful Purpose Theory

The appellee does not contend, and indeed it could not be contended, that were the picketing for the purpose of furthering the union's economic interests or for recognition of the unions by the appellee, that such picketing would not be lawful and any damages sustained thereby would be damnum absque injuria. *Blumauer v. Portland M.P.M.O. Union,* 141 Or. 399, 17 P. 2d 1115 (1933). The appellee insists, however, that the purpose of the picketing was to secure the rehiring of the crew members and that such purpose is "unlawful" since "there is no right to strike or to bargain collectively in the crew during the existence of the articles" (Appellee's Br. pp. 23-24). Or, stated in other words, the object of the picketing was unlawful because the employees involved were seamen.

If we assume for the purpose of argument that the picketing by the appellants was for the purpose of securing the rehiring of the former crew members, we contend that such picketing would nevertheless be for lawful purpose.

Before examining the cases which are relied upon by appellee and cited on page 24 of its brief, it is important to make clear a fundemental distinction between a case where crew members who are under articles neverthe-

less go on *strike*, and on the other hand a case where after a crew has been discharged and when there are vacancies in the complement of the crew, the vessel is picketed pursuant to a dispute with the union.

The cases cited by appellee on page 24 of its brief merely involve the first of the situations just described. The most that can be said for those cases is that under the American law a strike during the period of valid articles even for a legitimate labor purpose nevertheless constitutes mutiny. However, none of these cases cited by appellee covered the other situation where there is picketing by a union after a crew has been discharged and have been put off the vessel.

Throughout its brief appellee insists that the articles were still in effect, whereas clearly the crew had been discharged (Tr. 241). They had been removed from the vessel by the court at the instance of the appellee (Tr. 241). They had been jailed by the Immigration authorities and were still in custody and had been ordered deported (Tr. 18). They had filed a libel against the vessel for the collection of their wages (Tr. 19). The appellee was not attempting to operate the vessel. How, then, can it be said that the picketing complained of in these cases was unlawful because it was mutinous?

We submit that appellee's contention that the picketing involved in these cases was for an "unlawful purpose" is fully answered in Chief Judge Coleman's decision in *Matson Navigation Co. v. Seafarers' International Union,* 100 F. Supp. 730 (1951 (DC Md.). In the *Matson* case a vessel, the SS HAWAIIAN BANKER, arrived at

Baltimore, Maryland, with a full crew under articles. Its owner, the Matson Navigation Company, had a collective bargaining agreement with the Marine Engineers Beneficial Association, a CIO union, covering the wages and working conditions of the licensed engineers employed aboard the vessel. Nevertheless the vessel was picketed by the Brotherhood of Marine Engineers, an AFL union, and other AFL unions. The employer sought an injunction against the picketing in the United States District Court for the District of Maryland. It contended, as appellee contends here, that "the unlawful character of the present picketing warrants injunctive relief." The court, after a careful analysis of the Norris-LaGuardia Act, and an examination of the cases decided under it, held that although "the real purpose of the picketing was to effect a reprisal" against the CIO union, nevertheless it was pursuant to a "labor dispute" and the employer was not entitled to any relief.

We also wish to call the court's attention to the fact that the courts of the State of Oregon have ruled on the precise question presented in this appeal. Prior to filing its suit for an injunction and damages in the District Court below, appellee filed its suit for an injunction and damages in the Circuit Court of the State of Oregon for Multnomah County. Demurrers were interposed against both the complaint and the amended complaint on the ground that the controversy constituted a labor dispute and on the ground that the controversy was within the terms of the Taft-Hartley Act.

The state court (Judge Bain) in sustaining the demurrers, said:

"The court, having heard the arguments of counsel and finding that the complaint does not state facts sufficient to constitute a cause of suit, and being fully advised in the premises,

"IT IS ORDERED that the demurrer of the defendants to plaintiff's first amended complaint be and the same hereby is sustained."

Compania Naviera Hidalgo, S.A. v. Sailors' Union of the Pacific, et al., No. 207-708, Circuit Court of Multnomah County, Oregon.

Appellee then, for reasons sufficient to it, took an order of voluntary dismissal without prejudice and then filed the within cases in the District Court of Oregon.

Even if the decision of the state court is not res judicata of the cases involved here, nevertheless the decision of the state court announces the law of the State of Oregon and the federal court must follow the rule of law announced by the state court whether or not the state Supreme Court has directly passed on the question. *West v. American Telephone & Telegraph Co.*, 311 U.S. 223, 236, 61 S. Ct. 179, 183, 85 L. Ed. 139, 132 A.L.R. 956 (1940); *Pullman Standard Car Co. v. Local Union No. 2928,* 152 F. 2d 494 (1945).

In an attempt to substantiate the holding that the picketing herein was for an "unlawful purpose," the appellee on page 27 of its brief deliberately makes the false assertion that the pay and working conditions aboard the SS RIVIERA were governed by an existing collective bargaining agreement, and thus the right to strike was extinguished during the life of the agreement.

In the first place Captain Johnson, the Master of the vessel, admitted that there was no collective bargaining agreement. He said:

> "I couldn't say whether there was a written agreement between the owners of the RIVIERA and any one of the unions with respect to what wages would or would not be paid aboard the RIVIERA. I don't know anything about it. I have been master of the RIVIERA for about two and one-half years and during all of that time I have never seen a written agreement between the owner of the RIVIERA and any British unions." (Tr. 210).

Furthermore the annotation referred to by appellee in 2 A.L.R. 2d 1278, 1281, refers to the right to strike by the union which is the party to the collective bargaining agreement. It does not refer to picketing by unions who are not parties to the agreement.

Referring again to the cases upon which the appellee relies, it is important to note that in *Rees v. U. S.*, 95 F. 2d 784, and in *Southern Steamship Co. v. NLRB,* 316 U.S. 31, 81 L. Ed. 1246, 62 S. Ct. 886, that the courts in discussing the duty of seamen under American articles first point out that their duty is based upon the rights and protection which they receive under the *American law*. In the *Rees* case the court said:

> "The laws of the United States concerning seamen, their rights and their treatment, are more liberal and more favorable to the seamen than the laws of any other country. Great care has been taken by Congress to safeguard their rights and protect them from injustice."

However, as appellee points out in its brief on page 30, "The RIVIERA was foreign territory." Its articles

and internal operation were governed by the law of its flag, Liberia. Appellee has neither plead nor proven the Liberian law with respect to articles, desertions or mutiny. The cases relied upon by appellee all involve conduct of American seamen aboard American vessels and the courts applied the U. S. Criminal Code to find the unlawfulness of the seamen's conduct. The court is not at liberty to speculate as to what the law of Liberia might be with respect to these matters. *Cuba R. Co. v. Crosby,* 222 U.S. 473, 56 L. Ed. 275, 32 S. Ct. 132 (1912); 41 Am. Jur., Pleading, Sec. 13, p. 296; 20 Am. Jur., Evidence, Sec. 179, p. 184. Indeed, it is common knowledge that shipowners have registered their vessels in foreign countries such as Liberia in order to avoid the duties imposed by the Ameircan law.

It must be remembered that the appellee is here seeking to recover damages from the appellants for an alleged tort. The burden certainly is upon it to show clearly the basis of its cause of action. None of the cases cited by it involve either picketing or damages for picketing. They merely involve questions concerning the individual responsibility of seamen for strikes and mutiny aboard American ships. They did not touch on the questions of labor relations outside of the internal operation of the vessel during the existence of the articles. In the case at bar these questions had all been determined before the picketing complained of herein began. The crew had been discharged and removed from the vessel.

Applicability of the Taft-Hartley Act and the Norris-LaGuardia Act

In our opening brief we demonstrated that the matters and things involved in these cases were governed by the National Labor Relations Act and called the court's attention to the cases holding that the Act preempted the field. As an alternative we pointed out that should the National Labor Relations Act not be applicable, that the provisions of the Norris-LaGuardia Act should govern. In answer to this appellee contends that neither of the federal acts is applicable because "The RIVIERA was foreign territory" (p. 30 Appellee's Br.).

We can only conclude that it is appellee's contention that the American law granting it rights for either an injunction or damages is applicable to this case, but the American law safeguarding rights, privileges and immunities to laborers or labor organizations has no application to this case. In one breath appellee states "The RIVIERA was foreign territory,,' and in another breath appellee seeks damages for picketing under American law. Obviously, the appellee must predicate its right for damages upon the American law because it has not plead, nor proven, the Liberian law.

The appellee's contention that the National Labor Relations Act is not applicable without even discussing whether or not if it were applicable that the appellants' conduct would be protected, clearly indicates its admission that were the National Labor Relations Act applicable that it would have no cause of action herein. Appellee on page 30 of its brief cites *Sailors' Union of the*

Pacific, Case No. 20, R.C. 809, May 1, 1950, C.C.H. Labor Reports, 1950-51, NLRB Decisions, Par. 1,081. Appellee contends that this case holds that the National Labor Relations Board had "no jurisdiction" to determine the collective bargaining agent for a crew of a foreign vessel. The decision is brief, and we have set it out in full as Appendix A, and we submit that such is not the holding, but that the Board merely held that it would decline to exercise its jurisdiction in that case. On the other hand, in a number of cases, the National Labor Relations Act has been applied where foreign ships and foreign seamen are involved. Indeed, the National Labor Relations Board exercised its jurisdiction with respect to the picketing of the very same vessel involved in the case referred to by appellee. See *Sailors' Union of the Pacific (AFL) and Moore Dry Dock Co.,* 92 NLRB 547, 27 LRRM 1108 (1950). And in the same dispute the Superior Court of the State of California for San Mateo County refused to take jurisdiction of the suit filed by the foreign shipowner for an injunction on the ground that the Taft-Hartley Act had preempted the field. *Compania Maritima Samsoc Limitada, S.A. v. Sailors' Union of the Pacific,* et al., No. 51565.

Also in *Norris Grain Co. v. Seafarers' International Union,* 232 Minn. 91, 46 N.W. 2d 94, 26 LRRM 2597 (1950), it was held with respect to the picketing of a Canadian vessel with a Canadian crew at a Minnesota dock that the remedy under the National Labor Relations Act was exclusive.

Furthermore the definition of "commerce" in the National Labor Relations Act includes commerce with a

foreign country. 29 USCA Sec. 152(6). See Appendix C. This is in keeping with the grant of power to Congress provided for in the Federal Constitution.

We submit, therefore, as we demonstrated in our opening brief, that the federal law is applicable to this case and that appellee, who was engaged in American trade, cannot avoid its provisions because of its mixed foreign nationality.

The Picketing Was Not the Proximate Cause of Appellee's Damages

Under this heading we shall not again restate the matters with respect to the vessel being in the custody of the Marshal and the admitted fact that the vessel did not have a crew aboard it. We wish only to point out with respect to the refusal of the shore employees to work aboard the vessel that appellee's contention that "there is no evidence that there was even a contractual duty on the employers to furnish the services contracted for in the fact of a picket line" is fully answered by agreed fact No. XIII (Tr. 19) which provides as follows:

> "Employees of stevedoring and ship repair firms and other shore *employees ordered to work on the said SS RIVIERA refused to so* work while said pickets representing the Sailors' Union of the Pacific were present. Immediately after the removal of said picket line, employees of *contractors with whom plaintiff had contracted for the repair and preparation of the vessel* to carry her cargo of grain to India resumed work on said vessed as requested." (Emphasis ours).

This certainly admits the existence of contracts to repair the vessel and dispenses with the necessity of our proving such contracts. If appellee desired to show that the contracts did not require performance in the presence of a picket line, the burden was upon it to show this affirmative provision.

The nonperformance of these contracts was clearly the intervening cause of appellee's damages. The election of the contractors not to perform their work on the vessel pursuant to their contracts during the picketing was an independent intervening wrongful act.

The Class Suit and Form of Decree

The appellee in support of its contention that the judgments in these cases should run against the property of the union, refers to the recent Oregon case of *Lonsford v. Burton,* (1953) 200 Or. 497, 267 P. 2d 208. The *Lonsford* case involved a suit brought by three members of a local union "on behalf of themselves and all other members of Local 401", seeking an injunction against the International Union. The case was dismissed upon the ruling of the court that the plaintiffs did not have sufficiently identical interests so as to authorize a class suit. There is nothing in the case concerning the nature and extent of a judgment against an unincorporated association in a class suit. On page 38 of its brief appellee lifted a portion of a sentence from the *Lonsford* case in an attempt to sustain its position. The entire sentence appeared as follows: "This court has not as yet adopted the rule of the Coronado case, and despite doubts, we

shall treat the answer of the named defendant as an answer made on behalf of the International."

In the *Lonsford* case at page 507 the Oregon court pointed out that a class suit was an invention of the equity court to facilitate litigation where parties are very numerous. With respect to the judgment to be entered in a class suit the court referred to the Restatement of Judgments, Sections 26 and 86. We have set out in Appendix B the sections of the Restatement of Judgments which are applicable to judgments against associations. From these it can be readily seen that it is not possible to render a judgment against the assets of an unincorporated association without an enabling statute. The assets of an unincorporated association have the same status as the assets of a partnership. Without an enabling statute only the partners or members can be sued and the judgment can be enforced only against them. Oregon does not have an enabling statute.

The cases cited on pages 39 and 40 of appellee's brief for the proposition that an unincorporated labor organization may be sued for torts by means of a class suit were all cases decided at the threshold, that is, they were cases which came up upon a motion of the defendant to dismiss the cause at its beginning. The court merely held that the class suit could continue against the unincorporated association. None of the cited cases have held that the judgment may run against the assets of the union. The quotation from Moore on Federal Practice that "the judgement should be binding upon the association" does not find support in the cases, and no cases are cited in support of it in the text.

We submit, therefore, that should judgment be entered for damages in these cases that it should run only against the individuals served, and if the court should find that this is a true class suit, that the judgment might be res judicata upon the other members of the class for certain purposes. This is the furtherest extent to which a judgment may run in a class suit in accordance with the Restatement of Judgments.

Respectfully submitted,

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APPENDIX A

Compania Maritima Samsoc Limitada, Sailors' Union of the Pacific (AFL) Case no. 20-RC-809, May 1, 1950 (Administrative Decision).

Representation Case—NLRB Jurisdiction—Foreign Vessel.

"A petition to represent employees on a vessel registered under the laws of Panama, manned by citizens of foreign countries, and owned by a Panama Corporation, the majority of whose stockholders were citizens of foreign countries, was dismissed on the ground that the internal economy of a vessel of foreign registry and ownership was involved."

APPENDIX B

American Law Inst. Restatement of Judgments

"Section 26. Representative or Class Actions.

Where a class action is properly brought by or against members of a class, the court has jurisdiction by its judgment to make a determination of issues involved in the action which will be binding as res judicata upon other members of the class, although such members are not personally subject to the jurisdiction of the court.

Comment:

a. A court has no jurisdiction to render a personal judgement against members of a class who are not personally subject to the jurisdiction of the court. It can,

however, make a final determination as to the issues decided in the class action which will be conclusive as to those issues not only as to the parties who are personally subject to the jurisdiction of the court but also as to those who are not so subject.

A judgment in a class action is determinative as to the issues involved, whether the judgment is in favor of or against the members of the class.

The circumstances under which a class action can properly be brought and the effects of a judgment in such an action are considered in sections 86, 116.

Section 86. Class Action.

A person who is one of a class of persons on whose account action is properly brought or defended in a representative action or defense is bound by and entitled to the benefits of the rules of res judicata with reference to the subject matter of the action.

Section 78. Capacity to be a Party.

Any person has capacity to be a party to a judgment.

Comment:

a. Persons under incapacity. "persons" include individuals and also groups of individuals who can sue and be sued as units.

c. Associations. * * *

In States in which suit can be maintained against an unincorporated association in its business name, judgment can be rendered which is valid against the assets of the association (see section 24). Whether the judg-

ment is effective to bind personally the members of the association over whom the court has jurisdiction depends upon whether the judgment is directed against the members of merely against the assets of the organization.

Section 24. Partnerships or Other Unincorporated Associations.

A court in a State in which a partnership or other unincorporated association is subject to be sued in the firm or common name acquires by proper service of process jurisdiction over it as to causes of action arising out of business done by the association in the State.

Comment:

a. Capacity to be sued. At common law a partnership or other unincorporated association cannot be sued in its firm name or common name. In an action to enforce liabilities incurred by it, the partners or members of the association must be named individually as defendants, except where a class suit is permitted (see section 26).

By statute in a number of States it is provided that an action can be maintained against a partnership or association in its firm or common name. The Federal Rules of Civil Procedure provide in Rule 17 (b) that capacity to sue or be sued shall be determined by the law of the State in which the district court is held, except that a partnership or other unincorporated association, which has no such capacity by the law of such State, may sue or be sued in its common name for the purpose of enforcing for or against it a sustaining right existing under the Constitution or laws of the United States."

APPENDIX C

"29 U.S.C.A. Section 152. Definitions.

When used in this subchapter— * * *

(6) The term "commerce" means trade, traffic, commerce, transportation or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, *or between any foreign country and any State,* Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or Territory or the District of Columbia or any foreign country." (Emphasis ours).